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IMPORTANT TAX NEWS FOR PASS-THROUGH ENTITIES

Increased Audits of Pass-Through Entities

- The Maine Legislature recently approved creation of a special Pass-Through Entity Audit Unit at Maine Revenue Services to more closely monitor pass-through entity and individual member compliance with income reporting and tax payment requirements.
- The Pass-Through Entity Audit Unit will examine pass-through entity and member taxpayer compliance in a variety of ways, including the following:
 - Compliance with Pass-through Entity nonresident member withholding requirements.
 - Reviewing apportionment of income for multi-state pass-through entities.
 - Ensuring proper pass-through of tax credits and limitations.
 - Confirming that members of pass-through entities file returns and pay the correct tax.
 - Accounting for income and deductions under both federal and state laws and regulations.

Withholding on Distributive Income for Nonresidents

- Maine law now requires that pass-through entities withhold and remit income tax quarterly from Maine-source distributive income for nonresident partners, shareholders or beneficiaries ("members"). This is in addition to any wage withholding requirement. See reverse for more information.
- Exemptions from registration and withholding requirements are available to eligible pass-through entities under certain circumstances. Your pass-through entity may qualify for one of the exemptions. See reverse for more information.

Learn More

To learn more about Maine pass-through withholding obligations and exemptions, visit our Web site at: www.maine.gov/revenue/ptwith.htm or call us at 207-626-8475 (Select 1, Option # 4).

See reverse for summaries of nonresident withholding, exemption and registration rules.

Who Must Register for Nonresident Withholding

Unless exempted, any pass-through entity with Maine-source income, at least one member of which is a nonresident of Maine, must register with MRS, withhold against that nonresident's Maine-source member income and submit that withholding to the State of Maine on a quarterly basis. A pass-through entity with members who are all residents of Maine is not required to register or withhold. Nonresident members may include trusts, corporations and pass-through entities with a commercial domicile in another state.

Pass-Through Entities

A pass-through entity is normally a business in which income and the resulting income tax liability passes through the business to the members of that business. Pass-through entities include partnerships, S corporations and limited liability companies. For purposes of the withholding requirement, trusts that generate Maine-source income for nonresident beneficiaries are also considered pass-through entities.

Nonresident Quarterly Withholding

If you are required to withhold, you must complete a withholding form (941P-ME) each quarter and return it to Maine Revenue Services. If the nonresident member's share of annual Maine-source income is less than \$1,000, the withholding requirement is waived for that member. Withholding is based on the nonresident member's share of Maine-source distributive income and the amount withheld is based on the highest marginal tax rate (8.5% for individuals, trusts and estates; 8.93% for C corporations). If a nonresident member is also an employee working in Maine, income withholding from that employee is also required and must be remitted separately. If you have no nonresident members, you are not subject to the pass-through entity withholding requirement. See www.maine.gov/revenue/ptwith.htm for more information on pass-through entity withholding.

Exemptions to Withholding on Distributive Income for Nonresidents

An exemption will fall into one of three categories: automatic, conditional, and requested.

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| Automatic: | <ul style="list-style-type: none">• Maine-source member income less than \$1,000.• Tax-exempt entity member.• Income tax previously withheld. |
| Conditional: | <ul style="list-style-type: none">• Compliant taxpayers - Requires a Pass-through Entity Withholding Exemption Form (941E-ME) with a List of Participating Members (941LM-ME) who have signed the Nonresident Member Affidavit and Agreement to Comply with Maine Income Tax (941AF-ME).• Composite filing - A composite filing is a simplified group return for two or more nonresident individual members of a pass-through entity. |
| Requested: | <ul style="list-style-type: none">• Requested exemptions are those which require prior written authorization from Maine Revenue Services (Notice of Exemption Authorization). If an automatic or conditional exemption is not available, and an unusual situation occurs in which the taxpayer believes the entity should be exempt from the withholding requirement, or if the entity would like to propose an alternate application of the withholding requirement, the entity may apply for an exemption. |

If exemption requirements are not met, the pass-through entity will be liable for withholding payments and applicable interest and penalty charges. An exemption from the withholding requirement on distributive income for nonresidents is not an exemption from filing the annual pass-through entity information return, Form 1065ME/1120S-ME. If an entity generates Maine-source income or has Maine resident members, Form 1065ME/1120S-ME must be filed. Also, an exemption from the withholding requirement on distributive income for nonresidents is not an exemption from separate individual employee withholding requirements. See www.maine.gov/revenue/ptwith.htm for more information on exemptions.